

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF HAWAII

WAYNE BERRY, a Hawaii citizen;	)	CIVIL NO. CV03-00385 SOM-LEK
	)	(Copyright)
	)	
Plaintiff,	)	<b>DEFENDANT PCT'S MOTION IN</b>
	)	<b>LIMINE NO. 1 (TO LIMIT</b>
vs.	)	<b>TESTIMONY OF WAYNE BERRY)</b>
	)	
HAWAIIAN EXPRESS SERVICE,	)	Judge: Hon. Susan O. Mollway
INC., et al.,	)	Trial Date: January 24, 2006
	)	
Defendants.	)	Hearing Date: January 20, 2006
	)	Hearing Time: 2:00 p.m.

---

**DEFENDANT PCT'S MOTION IN LIMINE NO. 1**  
**TO LIMIT TESTIMONY OF WAYNE BERRY**

COMES NOW Defendant the Post-Confirmation Trust ("PCT") by and through its attorneys, Kirkland & Ellis, LLP, and hereby moves this Honorable Court in limine for an Order limiting the testimony of Plaintiff Wayne Berry as follows:


- a) limit testimony to factual basis stated in his interrogatory responses;
- b) bar testimony regarding the link between infringement and Fleming's profits;
- c) bar testimony regarding any diminution of value to the Berry software;
- d) bar testimony regarding liquidation damages;

- e) bar testimony on actual damages or strictly limit it to the seven changes between the licensed and infringing software.

This motion is based upon Rule 7 of the Federal Rules of Civil Procedure and Rules 401, 402, 403, and 404 of the Federal Rules of Evidence, and is supported by the Memorandum in Support of Motion, Declaration of Lex R. Smith, and Exhibits attached hereto and the records and files herein

DATED: Honolulu, Hawaii, January 3, 2006.

KOBAYASHI, SUGITA & GODA



---

LEX R. SMITH  
THOMAS H. YEE

KIRKLAND & ELLIS LLP  
ERIC C. LIEBELER  
DAMIAN CAPOZZOLA  
R. OLIVIA SAMAD

Attorneys for Defendant  
POST CONFIRMATION TRUST